

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARIO ADAMS,

Defendant-Appellee.

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UNPUBLISHED  
February 28, 2008

No. 276678  
Wayne Circuit Court  
LC No. 06-100060

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted from a circuit court order affirming the district court's order dismissing charges of assaulting, resisting, or obstructing a police officer, MCL 750.81d, and possession of marijuana, MCL 333.7403(2)(d), based on the failure of the police to produce apparently lost or destroyed video evidence of defendant's arrest. We reverse and remand this case to the district court to conduct a preliminary examination. This case is being decided without oral argument under MCR 7.214(E).

Plaintiff argues that the district court erred in dismissing this case because there was no showing of bad faith on the part of the police with regard to the loss of the video evidence. We agree. We review a trial court's ruling on a motion to dismiss for an abuse of discretion. *People v Stephen*, 262 Mich App 213, 218; 685 NW2d 309 (2004).

Failure to preserve potentially exculpatory evidence does not constitute a denial of due process unless bad faith on the part of the police is shown. *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993). The defendant has the burden of showing that the evidence was exculpatory or that the police acted in bad faith. *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992). Neither showing was attempted by defendant in this case. In this regard, "the routine destruction of taped police broadcasts, where the purpose is not to destroy evidence for a forthcoming trial, does not mandate reversal." *Id.* Here, no evidence was presented to the district court to demonstrate that the destruction of the video evidence was done in bad faith or for the purpose of destroying evidence that could be used at defendant's trial. Accordingly, the district court abused its discretion in dismissing this case based on the failure of the police to preserve that evidence. Specifically, the failure to preserve that evidence did not violate defendant's due process rights, and we cannot conceive of any other legal basis for dismissal of the charges based on the failure of the police to preserve the video evidence.

Notably, the circuit court's rationale for affirming the district court reflects that the circuit court effectively made an independent factual finding of bad faith on the part of the police based on its view of a memorandum from a police officer. This was inappropriate because the circuit court was acting in an appellate role, and not as a trial court with fact-finding responsibilities. Indeed, the circuit court should not have considered this additional evidence that was not before the district court in reviewing the district court's decision. See *Hawkins v Murphy*, 222 Mich App 664, 670; 565 NW2d 674 (1997) ("This Court's review is limited to the record on appeal; we will not consider allegations not supported by the record presented.").

We reverse the district court's order dismissing this case and the circuit court order affirming the district court order, and remand this case to the district court to conduct a preliminary examination. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis